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UNITED NATIONS DECADE OF INTERNATIONAL LAW

Note verbale dated 19 September 1991 from the Permanent Representative of China to the United Nations addressed to the Secretary-General

With reference to the implementation by the Chinese Government of the programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law, the Permanent Representative of the People's Republic of China to the United Nations has the honour to inform the Secretary-General of the following:

1. In accordance with the programme for the activities to be commenced during the first term, the Chinese Government, with the cooperation of the United Nations Environment Programme and other agencies, held a symposium at Beijing on developing countries and international environmental law from 12 to 14 August 1991 in which 32 experts and scholars from 17 countries and international agencies concerned took part and adopted a final report (see annex).

2. The Chinese Government has drawn the attention of the Chinese Society of International Law to the programme for the activities to be commenced during the first term. At its 1991 annual conference, held from 10 to 13 September, the Society deliberated, inter alia, on the items entitled "Peaceful settlement of international disputes and the International Court of Justice", "The third world and international law" and "The teaching, study, dissemination and wider appreciation of international law". In particular, a seminar was organized on the last item to evaluate the situation in the teaching, study and dissemination of international law in China. The seminar decided to conduct a survey of the teaching and study of international law in China.

It would be greatly appreciated if this note and its annex could be distributed as a document under item 127 of the agenda of the current session of the General Assembly of the United Nations.

Annex

[Original: English]

FINAL REPORT OF THE SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW HELD AT BEIJING, 12-14 AUGUST 1991

INTRODUCTION

A symposium on developing countries and international environmental law was sponsored by the Chinese Government at Beijing from 12 to 14 August 1991, and was organized by the Chinese Ministry of Foreign Affairs with the cooperation of the United Nations, the United Nations Environment Programme, the Ford Foundation, China's National Environmental Protection Administration, the Chinese Society of International Law and the Environmental Law Institute of Wuhan University.

The symposium was attended by experts from both developing countries and developed countries and from relevant international organizations. H.E. Dr. Mostafa Tolba, Executive Director of the United Nations Environment Programme, the Honourable Mr. Ni Zhengyu, Judge of the International Court of Justice, Dr. F. Njenga, Secretary-General of the Asian-African Legal Consultative Committee and Mr. Wang Tieya, Vice-Chairman of the Chinese Society of International Law also participated in the symposium as special invitees (participants are listed in appendix I).

I. OPENING ADDRESSES

In his opening address, H.E. Mr. Qian Qichen, State Councillor and Minister for Foreign Affairs, stressed the importance of international environmental law. He said that international environmental law was growing into an important field of progressive development and codification of international law and that during its development process, many new concepts and new ideas had emerged which called for in-depth study and discussions by jurists of various countries. He also said that the key issue here was whether or not the developed countries would truly understand the special conditions and needs of the developing countries, give their sincere accommodation to such conditions and needs, and translate such understanding and accommodation into international instruments in the form of corresponding rights and obligations (see appendix II).

In his statement entitled "Tapping our boundless creativity", Dr. M. Tolba, Executive Director of UNEP, elaborated profoundly on various important aspects of the development of environmental law. He said that writing laws to save our planet constituted an entirely new challenge in the long tradition of law. An international treaty to deal with global

environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of indigenous techniques and technologies, was not worth its weight in paper. International environmental laws needed to build regimes which ensured that additional financial resources were available to enable developing countries to acquire cleaner technologies. The good will of the industrialized countries was the only guarantee that international environmental law would continue to develop into the comprehensive body of working legal instruments so badly needed to ensure that we correct existing damage, anticipate new environmental problems and prevent them (see appendix III).

Mr. Qu Geping, Director of China's National Environmental Protection Administration, said in his speech that China had attached great importance to environmental protection and had always held a positive and prudent attitude towards the law-making activities of international environmental law.

On behalf of Mr. C. A. Fleischhauer, Under-Secretary-General, the Legal Council of the United Nations, Mr. Andronico Adede congratulated the Chinese Government for convening the symposium and conveyed his conviction that the symposium would indeed make a tangible contribution to the implementation of the programmes of the United Nations Decade of International Law.

In the afternoon, H.E. Mr. Li Peng, Premier of the State Council of the People's Republic of China, received all the participants in Zhongnanhai.

II. SUMMARY OF PROCEEDINGS

In the first session of the symposium, the participants elected Professor Sun Lin, Director of the Treaty and Law Department of China's Foreign Ministry, Chairman of the symposium. Professor Antonio Cancado Trindade from Brazil and Mr. Ajai Malhotra from India were elected Rapporteurs. Mr. Liu Daqun, from the Treaty and Law Department of the Chinese Foreign Ministry, was appointed Secretary.

In his introductory remarks, Professor Sun Lin, Chairman of the symposium, said that its purpose was to strengthen the common understanding of the international community, the developed and developing countries in particular, to enhance the development of international environmental law and to narrow down their differences. He also said that he had hoped that this symposium would serve as the starting point of a long process and would show some preliminary results for that process.

A summary report, following a wide-ranging exchange of views in which differing perceptions on some aspects were put forward in a constructive spirit, follows.

A. Common concern of mankind

It was felt that the concept of common concern of mankind that had recently emerged was sufficiently flexible to warrant its general acceptance as providing a broad basis for the consideration of global environmental issues. It was this flexibility that made the concept readily acceptable. To attempt to provide it with specific attributes or legal connotations at this stage would perhaps not serve the interests of its further development. Acknowledging that protection of the environment and development were indivisible and could not be considered in isolation from each other, it was felt that the concept of common concern of mankind should relate both to the environment and to development.

B. Sharing of burdens

It was emphasized that underlying the concept of "common concern" was the requirement to forge a global partnership at the international level which would simultaneously seek to protect the environment while addressing the developmental needs of the developing countries. Accordingly, the developed countries, being primarily responsible for the historic and current emission of pollutants into the environment, bore the main responsibility for cleaning up the environment. This widely-accepted "main responsibility" principle must provide the basis for action in the environmental field. Moreover, if one were to consider the financial, economic, scientific and technological capabilities for undertaking such corrective action relating to the environment, it becomes quite clear that it is the developed countries which must shoulder most of the burdens. Equally, the developing countries must participate in efforts to clean up the environment, taking into account their own specific capabilities and their national plans, programmes and priorities relating to development and the environment.

C. Sovereign rights

International cooperation in the field of the environment and development must fully respect the sovereign rights of States. Its role should be to support and supplement, not to supplant, national efforts.

D. Funding and technology transfer

It was agreed that adequate, new and additional funding would be required by developing countries to enable them to join in international cooperative efforts to protect the environment. It was stressed that transfer of environmentally sound technologies to the developing countries should be made available on a preferential and non-commercial basis. Such technologies should not simply become another source of excessive commercial profit for the developed world. It was stressed that the Special Multilateral Fund set up under the Montreal Protocol to protect the ozone layer and the system of its

management and control provided an excellent example to be emulated as and when other funding mechanisms were established under international legal instruments presently being negotiated. While reference was made to the Global Environmental Facility, it was, however, felt that in its present form the Facility was quite inadequate to address the pressing environmental concerns of the developing countries. There was also a consensus that the incorporation of environmental concerns and considerations in development planning and policies should not be used to introduce new forms of conditionality in aid or in development financing.

E. Special needs of developing countries

It was felt that unless widespread and abject poverty in the developing countries was tackled head on, the international community would avoid at its own peril facing up to being a major contributor to environmental degradation in the developing world. The environmental problems of developing countries were often a reflection of the inadequacy of development. Addressing these environmental problems in their totality and in a balanced manner would require that full cooperation be extended to the developing countries in their efforts to break the vicious circle linking poverty, underdevelopment and environmental degradation. Special attention would have to be given to the particular needs and concerns of the least developed countries. Solution of global environmental problems would have to be accompanied by solution of the problem of global poverty.

The concept of "sustainable development" included the fostering of economic growth, the meeting of basic domestic needs (including in areas such as health, nutrition, education and housing), and the eradication of poverty so as to provide all with a life of dignity in a clean, safe and healthy environment. While considering the concept of "sustainable development", it was important to remember that its major focus had to be on the "development" aspect of the concept.

F. Environmental protection and human rights

There was general consensus that there were linkages between the domain of environmental protection and that of human rights, provided mainly by the focus on certain fundamental rights (inter alia, the right to life and the right to health). It was further indicated that the emergence of the right to a healthy environment and the right to development was meant to enhance, rather than to restrict, other rights, given their indivisibility and interrelatedness. It was generally felt that environmental protection also amounted ultimately to a quest for survival and the protection of human health.

G. Settlement of disputes

Several mechanisms of dispute settlement appropriate for environmental protection were surveyed; particular emphasis was laid on dispute avoidance by means of exchange of information or consultation. It was felt that any new legal instruments which may be negotiated should contain built-in mechanisms for the settlement of disputes; reference was, in this context made to the mechanism for dispute settlement contained in the 1985 Vienna Convention on the Protection of the Ozone Layer as a good model to be followed.

III. RECOMMENDATIONS

During the discussions, the following areas were identified as requiring futher consideration for the progressive development of international environmental law in the context of the United Nations Decade of International Law (1990-1999):

(a) Progressive refinement of the concept of the right to development;

(b) Development of the evolving concept of the right of all to a life of dignity and an adequate standard of living in a clean, safe and healthy environment;

(c) Equitable sharing of burdens as a legal basis for the transfer of adequate, new and additional financial resources to developing countries;

(d) A legal basis for the transfer of environmentally sound technologies to developing countries on preferential and non-commercial terms;

(e) Progressive and timely refinement of the "common concern of mankind" concept with reference to its implications for both the environment and development;

(f) Elaboration of measures to ensure that the transnational corporations operating in developing countries carry out their special responsibility for environmental protection and sustainable development in those countries;

(g) The sovereign rights of States over their natural resources.

Appendix 1

[Original: English]

LIST OF PARTICIPANTS IN THE SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW

Participants from the developing countries

Bangladesh	Mr. Toufiq Ali Director-General Ministry of Foreign Affairs
Brazil	Prof. Antonio A. Cancado Trindade University of Brasilia
China	Mr. Sun Lin Director Treaty and Law Department Ministry of Foreign Affairs
	Prof. Han Depei Director Environmental Law Research Institute Wuhan University
	Ms. Song Li Division Chief Treaty and Law Department Ministry of Foreign Affairs
Chile	H.E. Mr. Oscar Pinochet de la Bara Ambassador Director of the Diplomatic Academy (Academia Diplomática de Chile)
Egypt	Dr. Abdllah Hassan Al Ashal Deputy Director Department of Treaty and Law Ministry of Foreign Affairs
Ghana	Mr. Larsey Mensah Legal Officer Environmental Protection Council
India	Mr. Ajai Malhotra Director (United Nations) Ministry of External Affairs

Indonesia	Mr. Moestadji Special Assistant State Ministry of Population and Environment
Malaysia	Mr. Amdan Bin Mat Din Senior Federal Counsel Advisory and International Law Division Attorney General's Chambers of Malaysia
Mexico	Ms. Diana L. Ponce-Nava Director Programme of International Cooperation for the Ecology and Environment of Mexico
Nigeria	Dr. J. B. Ajala Director General Federal Ministry of Justice
Senegal	Mr. Bakary Kante Director Ministry of Environment
Yugoslavia	Dr. Budislav Vukas Professor at the University of Zagreb Faculty of Law Legal Advisor at the Federal Secretariat for Foreign Affairs

Participants from the developed countries and international organizations

Australia	Mr. Michael Smith Legal Advisor Department of Foreign Affairs and Trade
Germany	Mr. Ansgar O. Vogel Director Federal Ministry for the Environment, Nature Conservation and Nuclear Safety
United Kingdom of Great Britain and Northern Ireland	Dr. Glen Plant Director, Centre for Environmental Law and Policy London School of Economics
United States of America	Prof. Stephen McCaffrey McGeorge School of Law University of the Pacific

United Nations	Mr. Andronico Adede Director for Research and Studies Codification Division Office of Legal Affairs
	Dr. Roy S. Lee Principal Legal Officer Office of the Legal Counsel Office of Legal Affairs
United Nations Environment Programme	Dr. Iwona Rummel-Bulska Chief Environmental Law and Institution Unit United Nations Environment Programme

Special invitees

United Nations Environment Programme	H.E. Dr. Mostafa K. Tolba Executive Director
The Ford Foundation	Mr. Peter Harris Representative for China
	Mr. Johnathan Hecht Program Officer
International Court of Justice	Judge Ni Zhengyu International Court of Justice
Iran-United States Claims Tribunal	Mr. C. W. Pinto Secretary-General Iran-United States Claims Tribunal
Asian-African Legal Consultative Committee	Mr. Frank X. Njenga
International Council of Environmental Law	Mr. Erkki Hollo Professor of Helsinki University of Technology
Chinese Society of International Law	Prof. Wang Tieya Vice-Chairman Chinese Society of International Law Peking University

Appendix II

[Original: Chinese]

OPENING STATEMENT BY STATE COUNCILLOR AND MINISTER FOR FOREIGN AFFAIRS, MR. QIAN QICHEN, AT THE SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW, BEIJING, 12 AUGUST 1991

It is a privilege for me to take this opportunity to welcome you all to Beijing for the symposium on "Developing Countries and International Environmental Law", and to express my sincere appreciation for your presence here.

International law is an important means for the maintenance of world peace and order. The General Assembly of the United Nations declared the period 1990-1999 the United Nations Decade of International Law, which is of positive importance to the disseminations of and respect for international law and to its progressive development and codification. I am very happy to note that the symposium will be a substantive contribution to the first term (1990-1992) of the United Nations Decade of International Law.

The protection of human environment has increasingly become an important subject in international affairs. Scientists, ecologists, sociologists, jurists and political leaders all focus their attention on the global environment protection. The requests and measures for protecting the common environment of mankind will ultimately be incorporated into international legal instruments which should be effective and universally accepted.

Since the convocation of the United Nations Conference on the Human Environment in 1972, the international community has made unremitting efforts for the protection of the common environment and drawn up a series of international legal instruments on the protection of the land, sea and atmospheric environment. International environmental law is growing into an important field of progressive development and codification of international law. During its development process, many new concepts and new ideas have emerged which call for in-depth study and discussions by jurists of various countries. In the light of the needs of the development of international environmental law, new characteristics in the existing principles of general international law should be given expression, and some existing legal concepts and principles should be discussed and applied from a brand new angle that facilitates the protection of the global environment. It is an extremely arduous and urgent task for the international jurists to turn these concepts and ideas into concrete rights and obligations.

It requires joint efforts of all countries in the world to solve the global environmental issues, while active and effective participation by the developing countries has a direct bearing on mankind's final attainment of this objective. It is therefore imperative to encourage and promote

understanding and cooperation between the developed and the developing countries and effective international cooperation among all countries based on the principle of equity. The key question here is whether or not the developed countries will truly understand the special conditions and needs of the developing countries, give their sincere accommodation to such conditions and needs, and translate such understanding and accommodation into international instruments in the form of corresponding rights and obligations. This conference will conduct useful discussions of relevant legal issues. I am looking forward to your heartening progress in this respect.

China has all along attached great importance to environmental protection, which is one of its basic State policies. China has actively participated in various international efforts to protect the common environment and sponsored the Ministerial Conference of Developing Countries on Environment and Development at Beijing in June 1991, thus making a positive contribution on the part of the developing countries to the 1992 United Nations Conference on Environment and Development. China has become a party to the international instruments on the protection of ozone layer and has been participating in the negotiations for the convention on climate change and the convention on the protection of biodiversity. China will spare no efforts to contribute its share to the protection of the living environment of mankind.

I wish the conference a complete success.

Appendix III

[Original: English]

"TAPPING OUR BOUNDLESS CREATIVITY"

STATEMENT BY DR. MOSTAFA K. TOLBA, EXECUTIVE DIRECTOR, UNITED NATIONS ENVIRONMENT PROGRAMME AT THE SYMPOSIUM ON DEVELOPING COUNTRIES AND INTERNATIONAL ENVIRONMENTAL LAW, BEIJING, 12 AUGUST 1991

It is an honour and pleasure to join you all for this important meeting. I wish to begin by expressing my sincere gratitude to you, Foreign Minister Qian Qichen, and through you to the Government of the People's Republic of China for organizing and hosting this symposium, the first under the United Nations Decade of International Law.

The message the Chinese delegate carried to the Stockholm Conference nearly two decades ago was "We hold that of all things in the world, people are the most precious. People have boundless creative power. The development of social production and the creation of social wealth depend on people." That message is still perfectly true. But we have also learned over and over again that people, or rather people's actions, need the guidance of laws. The pursuit of social wealth has too often prompted suffering, strife and conflict between neighboring States. And it has led to the mounting destruction of our planet. To correct all this and to avoid further destruction and conflict, developed and developing countries have made remarkable progress in the last two decades in building and strengthening national environmental laws.

Progress in international environmental law is increasingly moving in tandem with national developments. A new discipline of international law, with its own specialized terminology, is evolving. Today, approximately 150 multilateral environmental treaties are in force. These are also the quasi-federal regulations under the European Community. In addition, a growing number of what some lawyers call "soft law", including principles, goals, guidelines and codes of conduct, have been adopted or are being elaborated.

But for international environmental laws to be implemented, they require legislation to be enacted at the national level. And in these critical areas of development and implementation of national and international environmental legislation, providing considerable assistance to developing countries must be an overriding priority, a point to which I will return.

Experience in environmental law over the years has taught us a number of important lessons.

First, that legally binding agreements defuse conflicts. Growing pressure on natural resources, particularly on land and fresh-water resources,

coupled with mounting transboundary pollution, are creating potential flashpoints of conflict between States. One example is acid rain. It has been the subject of dispute between Canada and the United States, and between the Nordic countries and other European States. Effective emission abatement accords, including the Convention on Long-Range Transboundary Air Pollution and the United States-Canada Acid Rain Agreement, were the answer.

Another example is the transboundary movement of hazardous wastes. When hazardous wastes produced in the North were dumped in some developing countries which lacked adequate disposal facilities, old resentments between South and North were rekindled. Charges of "garbage imperialism" were heard.

In response, and following tough negotiations which grappled with such legal issues as prior informed consent and liability and compensation, in March 1989, 116 countries and the European Community signed the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Since then, even before the entry into force of the treaty, we have hardly heard of illegal dumping of such wastes.

Secondly, because of transboundary air, water and land pollution, liability and compensation is becoming an increasingly needed and acceptable component of international environmental law.

We should, however, be quite clear. Liability and compensation represent options only if environmental damage can be corrected. There is no merit in creating avenues of recourse if planetary damage is irrevocable. In the case, for example, of biological diversity, what level of compensation should be attached to the loss of undiscovered species which might have enormous medical or biotechnological applications? I know this is a question perhaps more fitting for economists than lawyers. What lawyers can do is to consider under which conditions articles or protocols on liability and compensation are applicable.

Thirdly, as environmental problems grow, "environmental security" is being viewed by lawmakers as comparable to food, energy, military and other more familiar gauges of national security.

Lawyers, as a matter of urgency, have to define the areas where there is a need for treaties to establish environmental security and to champion the expansion of the concept of global security to encompass environmental security.

Fourthly, environmental problems are easily recognized at the regional level. And hence, the first steps on the road to meaningful international environmental laws were taken in response to shared problems at the regional level. In 1974, for example, Governments including those of Turkey, Greece and Cyprus, the Arabs and Israel - Governments who had not sat at the same table for years because of profound political or other differences - agreed to the Mediterranean Action Plan.

Action in the Mediterranean provided the blueprint for other regional accords, including regional seas plans for West and Central Africa, the South-East Pacific, the Red Sea, the Caribbean and the South Pacific and, in 1987, a regional agreement involving eight countries sharing the Zambezi river basin in Africa.

Each of these agreements was born of necessity, reflecting that (a) environmental degradation, natural resource depletion and transboundary pollution are utterly indifferent to political borders; (b) Governments entered into legal agreements because they and the people they represent easily see the problems, often literally at their doorsteps; and that (c) cooperation in tackling shared problems makes more sense than trying to find one culprit. In environmental destruction, there is rarely a "smoking gun". Trying to lay blame is a time-consuming, unsuccessful and ultimately unconstructive exercise, diverting attention while destruction continues unabated.

Fiftly, when the problems are of a global nature, Governments will work together to design responses, provided the facts point to the need for such responses. In this category, developed and developing countries have agreed to a number of international environmental legal instruments, including the Convention on International Trade in Endangered Species of Wild Fauna and Flora, the London Dumping Convention, Regional Seas Conventions and, in an historic breakthrough in international law and international relations, the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer and, as I just noted, the Basel Convention.

Sixthly, through all these treaties, we have learned that laws in themselves, no matter how well designed, are not enough. They need to be bolstered by institutions that possess real enforcement clout. They need financial resources to ensure laws on the books become laws of the land. They need to have access to monitoring and assessment capabilities, to determine the impact of the treaties and their related national laws. And they require education and training programmes that build multidisciplinary cadres capable of tackling complex environmental issues and setting national environmental standards.

These issues are of key concern to developing countries. And as I said earlier, unless assistance is forthcoming to help them overcome these hurdles, developing countries will not be able to act as equal partners in addressing regional and global environmental problems. Of course, they need the same type of assistance to allow them to build environmental policies and bodies or laws to handle their own national problems.

Challenges facing developing countries gravitate around two basic issues: technology development and transfer, and additional financial resources.

Unlike the industrialized world, most developing countries lack the technologies for environmentally sound energy, industrial, agricultural and

other key development priorities. They do not have the financial resources necessary to acquire them. And if they have, they always stumble on the issues of patents and intellectual property rights. The North sees and accepts that words of advice to the South are not enough. They accept that the simple advice not to repeat the mistakes which fueled industrialization and now imperil the Earth, mistakes of resources, gluttony and unchecked pollution, will not achieve much. They accept that industrialized countries must back words with a commitment to the development of environmentally sound, efficient technologies by developing countries, or their transfer to them.

An international treaty to deal with global environmental problems without clear provisions for technology transfer, and for assistance in the development or revival of indigenous techniques and technologies, is not worth its weight in paper. This issue, of course, necessitates that lawyers look at treaties governing patents, intellectual property rights, trade and so on.

Closely linked to technology transfer is the issue of additional financial resources. International environmental laws need to build regimes which ensure that additional financial resources are available to enable developing countries to acquire cleaner technologies, and to assure that the private sector of developed countries will be fairly compensated for the large sums it spends on research and development for new technologies. Developing countries need also to be compensated for forgoing, for the good of humanity, the exploitation of their own national patrimony of natural resources, such as tropical forests.

I think we all agree that developing countries cannot divert pathetically scarce resources away from more immediate priorities - famine, malnutrition, illiteracy, unacceptable health and social services, in addition to servicing their crippling debt - in order to address environmental problems largely the doing of others. Accordingly, developed countries need to repeat the admirable attitude displayed under the 1990 amendment of the Montreal Protocol to protect the ozone layer. There they agreed to contribute additional financial resources to a Special Multilateral Fund to assist developing countries in participating in the cooperative approach to the solution of that global environmental problem. Industrialized countries also agreed to an innovative financial mechanism that ensures that developing countries have an equal say in all decision-making.

I realize, of course, that questions of technology transfer and additional financial resources will not be answered by lawyers. I am aware that it is the duty of politicians and economists to find solutions. Yet it is vital for lawyers - as the legal architects of environmental treaties - to (a) know the details of the thorny issues which are surfacing in all negotiations now under way - on climate change and biological diversity and in the Preparatory Committee of the forthcoming United Nations Conference on Environment and Development; and, (b) identify options to deal with these complex issues of additional financial resources and technology transfer on the basis of formulae adopted in various existing treaties. This can take us a long way in reaching agreement in the treaties and plans to address environmental problems now being negotiated.

Writing the laws to save our planet consitutes an entirely new challenge in the long tradition of jurisprudence. Lawyers are wisely drawing on age-old principles of justice, fairness and equity. Environmental law continues to build on established precedents and principles of international law. One of them is the Barcelona Traction Case, by which it was held that certain issues are considered to be of concern to all States. They are also building on the crucial Principle 21 of the Stockholm Declaration, which stipulates that States have (and I quote) "the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or beyond the limit of national jurisdiction".

While drawing on the past, international environmental law is breaking new ground with concepts like "intergenerational responsibility and intergenerational equity", "the global commons", "the precautionary principle", "common but differentiated responsibilities" and "the common concern of mankind". The latter found expression in the General Assembly of 1988, the Hague Declaration in 1989, and the Langawi Declaration of 1990.

All these concepts are new. They constitute a profound challenge to international lawyers to help define what they exactly mean. They constitute a special challenge to third world lawyers to figure out their potential implications - both positive and negative - to developing countries.

A possible outcome of this symposium, is to arrive at a recommendation to the United Nations Conference on Environment and Development on the role of developing countries in international environmental law. From the experience of the past 19 years, it is obvious that developing countries need and want to be active partners in the development and implementation of international environmental law. Developed countries alone cannot save our ailing planet. For developing countries to participate effectively, they need:

(a) Support from the position of partnership - not aid or charity - to participate meaningfully in negotiating international environmental treaties;

(b) Translation of the common concern concept into reality, with its accent on correcting existing problems, preventing further damage, and the pursuit of equity;

(c) Correct interpretation of the concept of common, but differentiated, responsibility.

Although many environmental problems are global in consequence, they are not in terms of contribution. Industrialized countries are responsible for approximately 75 per cent of total greenhouse gas emissions, about 90 per cent of the consumption of ozone depleting substances, and the bulk of hazardous wastes and toxic chemicals produced. I believe that developing countries agree that differentiated responsibility is not a conceptual springboard for recrimination, but a means of strengthening international equity.

(d) Proper clarification of the link between environment and trade. Developing countries are looking to the United Nations Conference on Environment and Development to answer numerous questions regarding the potential role environmental agreements have on trade: should environmental treaties push for uniform international product and production standards? And if so, what are the implications in terms of developing country comparative advantage? Are environmental treaties, laws and regulations contributing to the creation of tariff and non-tariff barriers? Are legal efforts to safeguard the environment unintentionally building protectionism?

(e) The establishment of ways and means to ensure that environmental treaties actually work. Compliance, enforcement and verification mechanisms need to be scrutinized and strengthened. The Kuwait-Iraq war demonstrated that a whole series of treaties governing actions during war - particularly as they relate to the environment - proved wanting. Although these treaties are in force, the number of parties who ratified them is limited - some are not ratified by permanent members of the Security Council. In virtually all cases, they have no means of verifying implementation. Other environmental treaties are not much better in this respect;

(f) Support to train the required cadres of lawyers and negotiators capable of putting forward their point of view effectively;

(g) Developing countries certainly need assurances - legally binding assurances - of additional resources and technology transfer.

We are all grappling with extremely complex, quickly changing issues. Environmental management strategies to deal with major environmental issues involve a sequential process of (a) getting the science of the problem "right"; (b) assessing its physical, social and economic impacts; (c) preparing response strategies and identifying their costs; and (d) building laws to ensure response measures stick. These four pillars form a multidisciplinary approach. We need natural scientists, social scientists, engineers, planners, economists and lawyers all working together.

But in all this, the burden falls on lawyers not only to develop politically, socially and economically acceptable language in environmental treaties, but also to consider the rights of the born and of the unborn, of individual nations, and of our only planet Earth; to seek guidance in the ideals of justice, equity and differentiated responsibility; and to articulate laws in clear, unambiguous language.

Developing countries have a large stake in these issues. They are the first beneficiaries of equitable international environmental laws. And they are the first to suffer from lopsided treaties or empty words. Hence the heavy responsibility that sits on the shoulders of international lawyers from the developing countries. But they cannot bear that burden alone. They depend on the good will and understanding of their colleagues from industrialized countries. This fraternity has prevailed over the past two decades. It needs to be further nurtured and fostered. This is the only

guarantee that international environmental law will continue to develop into the comprehensive body of working legal instruments so badly needed to ensure that we correct existing damage, anticipate new environmental problems and prevent them, make a reality of the rights and responsibilities of States regarding their own environment and that of others and, finally, ensure proper burden sharing in our collective quest to save our planet, and to save ourselves.

Thank you.

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Agenda item 124

UNITED NATIONS PROGRAMME OF ASSISTANCE IN THE TEACHING, STUDY DISSEMINATION AND WIDER APPRECIATION OF INTERNATIONAL LAW

Membership and functions of the Advisory Committee on the Programme

Note by the Secretary-General

1. The Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law (originally called Advisory Committee on Technical Assistance to Promote the Teaching, Study, Dissemination and Wider Appreciation of International Law) was established by the General Assembly at its twentieth session, by resolution 2099 (XX) of 20 December 1965, to advise the Secretary-General on the substantive aspects and on the implementation of the Programme. Paragraph 8 of that resolution provided, inter alia, that the Advisory Committee should be composed of 10 Member States to be appointed every three years by the General Assembly.

2. Also at its twentieth session, the Assembly appointed, on the recommendation of the Sixth Committee, the following States to serve on the Advisory Committee from 1 January 1966 to 31 December 1968: Afghanistan, Belgium, Ecuador, France, Ghana, Hungary, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America. 1/

3. At its twenty-third session, the Assembly, on the recommendation of the Sixth Committee, appointed the same States, with the exception of Afghanistan, which was replaced by Iraq, to serve on the Advisory Committee from 1 January 1969 to 31 December 1971. 2/

4. At its twenty-sixth session, the Assembly, on the recommendation of the Sixth Committee, increased the membership of the Advisory Committee from 10 to 13 and extended the term of office from three to four years, appointing the following States to serve on the Committee from 1 January 1972 to 31 December 1975: Barbados, Belgium, Cyprus, El Salvador, France, Ghana, Hungary, Iraq, Mali, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and United States of America. 3/

5. The same members, with the exception of Belgium and Iraq, which were replaced by Italy and the Syrian Arab Republic, respectively, were appointed again at the thirtieth session of the Assembly to serve on the Committee from 1 January 1976 to 31 December 1979. 4/

6. At its thirty-fourth session, the Assembly, on the recommendation of the Sixth Committee, appointed the following 13 Member States to serve on the Committee from 1 January 1980 to 31 December 1983: Barbados, Cyprus, Egypt, El Salvador, France, Ghana, Hungary, Netherlands, Sierra Leone, Syrian Arab Republic, Turkey, Union of Soviet Socialist Republics and United Kingdom of Great Britain and Northern Ireland. 5/

7. The procedure consistently used by the General Assembly until its thirty-fourth session in the appointment of the members of the Advisory Committee was as follows: once the various regional groups had taken their respective decisions concerning the States candidates for membership in the Advisory Committee, the Sixth Committee would include in the draft resolution on the item concerning the Programme of Assistance a paragraph with its recommendations to the General Assembly regarding the composition of the Advisory Committee for the following term.

8. However, at the Assembly's thirty-eighth session in 1983, as the decisions of several regional groups concerning the States candidates for membership in the Advisory Committee were not taken in time before the adoption by the General Assembly of the resolution on the item concerning the Programme of Assistance, the Assembly decided only that 13 Member States be appointed as members of the Advisory Committee for the period from 1 January 1984 to 31 December 1987, and entrusted its President to appoint the members of the Advisory Committee, 6/ in consultation with the regional groups. At its thirty-ninth session, the Assembly confirmed the nomination by its President of the following members of the Advisory Committee: Barbados, Cyprus, France, Ghana, Libyan Arab Jamahiriya, Netherlands, Romania, Sierra Leone, Syrian Arab Republic, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland and Venezuela. 7/

9. At its forty-second session, the Assembly reverted to the original procedure described in paragraph 7 above, and, on the recommendation of the Sixth Committee, it appointed the following 13 Member States to serve on the Committee from 1 January 1988 to 31 December 1991: Bangladesh, Cyprus, France, Ghana, Libyan Arab Jamahiriya, Mexico, Netherlands, Romania, Turkey, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, Venezuela and Zaire. 8/

10. At its forty-fifth session, in paragraph 1 of chapter IV of the Programme for the activities to be commenced during the first term (1990-1992) of the United Nations Decade of International Law (annex to General Assembly resolution 45/40 of 28 November 1990), the Assembly requested the Advisory Committee, in the context of the Decade, to formulate relevant guidelines for the activities of the Programme of Assistance and to report to the Sixth Committee on the activities carried out under the Programme in accordance with such guidelines.

11. As the mandate of the present membership of the Advisory Committee expires on 31 December 1991, it will be necessary to appoint the new members of the Advisory Committee.

12. Delegations may therefore wish to follow the procedure used consistently over the past years, except in 1983, so that, following decisions by the various regional groups concerning the States candidates for membership in the Advisory Committee, the Sixth Committee would include in a draft resolution on the present agenda item a paragraph with its recommendations to the General Assembly regarding the composition of the Advisory Committee for the period 1 January 1992 to 31 December 1995, assuming that the term of office remains four years as in the past.

Notes

1/ See decision following General Assembly resolution 2099 (XX).

2/ See Official Records of the General Assembly, Twenty-third Session, Supplement No. 18 (A/7218, Other decisions, item 89, p. 91.

3/ See General Assembly resolution 2838 (XXVI), para. 9.

4/ See General Assembly resolution 3502 (XXX), para. 9.

5/ See General Assembly resolution 34/144, para. 11.

6/ See General Assembly resolution 38/129, para. 12.

7/ See General Assembly decision 39/308.

8/ See General Assembly resolution 42/148, para. 14.